



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 6
1445 ROSS AVENUE, SUITE 1200
DALLAS, TX 75202-2733

JUL 14 2004

**SPECIAL NOTICE FOR REMEDIAL INVESTIGATION/FEASIBILITY STUDY
URGENT LEGAL MATTER - PROMPT REPLY NECESSARY
VIA CERTIFIED MAIL - RETURN RECEIPT REQUESTED**

CT Corporation System, Registered Agent for
Dow Chemical Company
350 N. St. Paul St., Suite 2400
Dallas, TX 75201

170725



Re: Special Notice Letter for the Gulfco Marine Maintenance Superfund Site
Freeport, Texas
Draft Administrative Order on Consent
Remedial Investigation and Feasibility Study

Dear Sir or Madam:

The purpose of this letter is to notify you of your potential liability, as defined by Section 107(a) of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA, also known as Superfund), 42 U.S.C. § 9607(a), at the Gulfco Marine Maintenance Superfund Site (the Site) in Freeport, Texas. This letter also requests from you reimbursement of costs incurred by the U.S. Environmental Protection Agency (EPA) for responding to releases, or threats of releases, at the Site. Total costs incurred as of April 30, 2004, are \$162,707.07. Based on available information (included as Enclosure C with this letter), EPA has determined that you may be liable under Superfund for the cleanup of the Site and for costs incurred by EPA in responding to the Site.

BACKGROUND

The Site is located at 906 Marlin Avenue, Freeport, Brazoria County, Texas. The property consists of Tracts 21 through 25 and Tracts 55 through 58, Subdivision 8, of the Brazos Coast Investment Company. Marlin Avenue separates Tracts 55 through 58 on the north from Tracts 21 through 25 on the south. Tracts 21 through 25 are approximately four-acre tracts bordered on the south by the Intracoastal Waterway. Tracts 55 through 58 are approximately five-acre tracts. The entire property is about 40 acres in size. The geographic coordinates of the Site are 28°58'07" north latitude, and 95°17'26" west longitude.

The Gulfco Site was a former barge cleaning, servicing, and waste disposal facility that operated from 1971 through 1998. Barges brought to the facility were cleaned of waste oils, caustics, and organic chemicals, and the wash waters generated during these operations were

stored in three unlined surface impoundments, or earthen pits, located on Lot 56 on the north side of Marlin Avenue. These impoundments were closed in 1982. After 1981, waste wash waters were stored in a rented floating barge or aboveground storage tanks located at the Site.

The Site is located on the north bank of the Intracoastal Waterway between Oyster Creek on the east and the Old Brazos River Channel and the Dow Barge Canal on the west. The southern part of the Site, south of Marlin Avenue, drains toward the south where it enters into the Intracoastal Waterway. Drainage from areas north of Marlin Avenue is to the northeast into adjacent wetlands and then to Oyster Creek.

In January 2000 and in January 2001, the Texas Commission on Environmental Quality, formerly the Texas Natural Resource Conservation Commission, conducted soil, ground water, and sediment sampling, and documented the presence of various hazardous substances at the Site including volatile organic compounds, semivolatile organic compounds, pesticides, polychlorinated biphenyls, and metals.

The Site was proposed for listing on the National Priorities List (NPL) on September 5, 2002 (67 FR 56794), and was placed on the NPL effective May 30, 2003, in a final rulemaking published on April 30, 2003 (68 FR 23077).

EXPLANATION OF POTENTIAL LIABILITY

CERCLA provides that four types of persons are liable for cleaning up (or paying the EPA to clean up) hazardous substances that have been released. The four types of liable persons are:

1. Persons who now own the place where the hazardous substances were released (owner);
2. Persons who once owned or operated the place where the hazardous substances were released during the time when the hazardous substances were disposed (operator);
3. Persons who arranged for disposal or treatment of hazardous substances at the place where the hazardous substances were released (generator); or
4. Persons who selected the place where the hazardous substances were released as a disposal site and transported the hazardous substances to that place (transporter).

The EPA's term for these persons is Potentially Responsible Parties (PRP). EPA has information (included as Enclosure C with this letter) that you may be a PRP as a generator who arranged for the disposal, treatment, or transportation of hazardous substances to the Site as

defined at Section 107(a) of the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. § 9607(a), as amended (CERCLA).

The EPA has spent, or is considering spending, public funds to investigate and control releases of hazardous substances or potential releases of hazardous substances at the Site. Under Superfund, specifically sections 106(a) and 107(a) of CERCLA, 42 U.S.C. §§ 9606(a) and 9607(a), PRPs may be required to perform cleanup actions to protect the public health, welfare, or the environment. The PRPs may also be responsible for costs incurred by EPA in cleaning up the Site.

SPECIAL NOTICE AND NEGOTIATION MORATORIUM

The EPA has determined that use of the special notice procedures set forth in Section 122(e) of CERCLA, 42 U.S.C. § 9622(e), may facilitate a settlement between you, the other PRPs, and EPA for performance of a Remedial Investigation and Feasibility Study (RI/FS) at the Site. A Remedial Investigation (RI) identifies site characteristics and defines the nature and extent of soil, air, surface water, sediment, and groundwater contamination at the Site and the risks posed by the Site. A Feasibility Study (FS) evaluates different cleanup options for the Site.

Under Section 122(e), this letter triggers a sixty (60)-day moratorium on certain EPA response activities at the Site. During this 60-day period, you and the other PRPs are invited to participate in formal negotiations with EPA in an effort to reach a settlement to conduct or finance the RI/FS. The 60-day negotiation period begins seven days from the date of this letter. The 60-day negotiation moratorium will be extended for an additional thirty (30) days if PRPs provide EPA with a "good faith offer" to conduct or finance the RI/FS. If settlement is reached between EPA and the PRPs within the 90-day negotiation moratorium, the settlement will be embodied in an administrative order on consent for RI/FS (AOC or Administrative Order).

GOOD FAITH OFFER

A proposed Administrative Order and Statement of Work is enclosed (Enclosure B) to assist you in developing a "good faith offer." As indicated, the 60-day negotiation moratorium triggered by this letter is extended for 30 days if the PRPs submit a "good faith offer" to EPA. A "good faith offer" to conduct or finance the RI/FS is a written proposal that demonstrates the PRPs' qualifications and willingness to conduct or finance the RI/FS and includes the following elements:

1. A statement of willingness by the PRPs to conduct or finance an RI/FS that is consistent with EPA's Statement of Work and draft Administrative Order and provides a sufficient basis for further negotiations;
2. A paragraph-by-paragraph response to EPA's Statement of Work and draft Administrative Order;

3. A detailed description of the work plan identifying how the PRPs plan to proceed with the work;
4. A demonstration of the PRPs' technical capability to carry out the RI/FS, including the identification of the firm(s) that may actually conduct the work or a description of the process they will use to select the firm(s);
5. A demonstration of the PRPs' capability to finance the RI/FS;
6. A statement of willingness by the PRPs to reimburse EPA for costs incurred in overseeing the PRPs' conduct of the RI/FS; and
7. The name, address, and phone number of the party or steering committee who will represent the PRPs in negotiations.

DEMAND FOR REIMBURSEMENT OF COSTS

In accordance with Section 104 of CERCLA, 42 U.S.C. § 9604, EPA has already taken certain response actions and incurred certain costs in response to conditions at the Site. You are responsible for reimbursing the Federal government for the response costs associated with these actions. These actions include, among others, preparation of the Hazard Ranking System package, performance of searches for PRPs, performance of Site inspections, and preparation of the Draft Administrative Order on Consent and the Draft RI/FS Statement of Work. The total of the EPA's costs through April 30, 2004, for the Site is \$162,707.07. Table A provides a listing of the EPA's costs:

TABLE A: LISTING OF THE EPA'S COSTS (Through April 30, 2004)	
COSTS	DOLLAR AMOUNT
Regional Payroll Costs	\$52,521.39
Regional Travel Costs	\$1,197.23
Enforcement Support Services	\$2,171.61
Environmental Services Assistance Teams	\$9,135.53
Response Action Contract Services	\$5,790.98
Technical Services and Support	\$25,252.93
Contract Lab Program Costs	\$18,374.46
Miscellaneous Costs	\$25.48
EPA Indirect Costs	\$48,237.46
TOTAL SITE COSTS	\$162,707.07

We hereby demand that you pay \$162,707.07. The EPA's demand for payment is made under Title 42 of the United States Code at Subsection 9607(a). EPA also anticipates expending additional funds for response activities, which may include a remedial action or oversight of a remedial action. Whether EPA funds the response action or simply incurs costs by overseeing the parties conducting the response activities, you are potentially liable for the expenditures plus interest.

PRP STEERING COMMITTEE

To assist PRPs in negotiating with EPA concerning this matter, EPA is attaching to this letter a list of the names and addresses of other PRPs (Enclosure A) to whom it is sending this Notice.

~~The EPA recommends that all PRPs meet to select a steering committee responsible for~~ representing the group's interests. Your good-faith offer may be made by you alone or through a steering committee. EPA recognizes that the allocation of responsibility among PRPs may be difficult. If PRPs are unable to reach consensus among themselves, we encourage the use of the services of a neutral third party to help allocate responsibility. Third parties are available to facilitate negotiations. At the PRPs' request, EPA will provide a list of experienced third-party mediators, or help arrange for a mediator.

ADMINISTRATIVE RECORD

Pursuant to CERCLA Section 113(k), 42 U.S.C. § 9613(k), EPA must establish an Administrative Record that contains documents that form the basis of EPA's decision on the selection of a response action for a site. The administrative record files, which contain the documents related to the actions conducted at this Site are available to the public for review. A copy of the Administrative Record file can be found at the EPA Region 6 offices in Dallas, Texas, or at the site information repository that was set up at the following location:

Freeport Public Library
410 Brazosport Blvd.
Freeport, TX 77541
(979) 233-3622

Contact: Ms. Margaret Janke, Branch Manager

You may wish to review the Administrative Record to assist you in responding to this letter, but your review should not delay such response beyond the 60-day period provided by CERCLA.

PRP RESPONSE AND EPA CONTACT PERSON

You are encouraged to contact EPA within thirty (30) days of receipt of this letter to indicate your willingness to participate in future negotiations at this Site. Please note that this Special Notice requires you to reply in writing with a good-faith offer within 67 days of the date of this letter. You may respond individually or through a steering committee if such a committee has been formed. The notice explains what the EPA means by a good-faith offer. Also note that the notice includes a demand for payment; this allows the EPA to preserve certain legal rights. If EPA does not receive a timely response, EPA will assume that you do not wish to negotiate a resolution of your liabilities in connection with the Site, and that you have declined any involvement in performing the response activities.

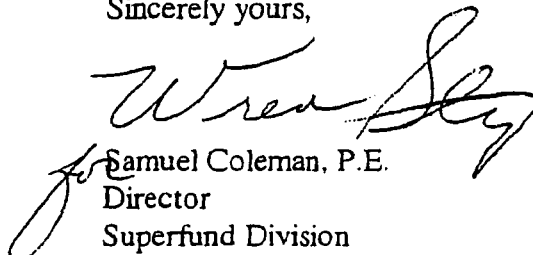
Your response to this Special Notice Letter and the demand for costs included herein, ~~including written proposals to perform the R/LFS for the Site, should be sent to:~~

Mr. M. Gary Miller, Remedial Project Manager
U.S. Environmental Protection Agency, Region 6
Superfund Division (6SF-AP)
1445 Ross Avenue, Suite 1200
Dallas, Texas 75202-2733
(214) 665-8318, FAX (214) 665-6660

The factual and legal discussions contained in this letter are intended solely for notification and information purposes. They are not intended to be, and cannot be relied upon, as final EPA positions on any matter discussed in this notice.

If you have any questions pertaining to this matter, please contact M. Gary Miller, Remedial Project Manager, at (214) 665-8318 or Janice Tracy, Enforcement Officer, at (214) 665-6717, or direct your attorney to contact Barbara Nann at (214) 665-2157 in the EPA Office of Regional Counsel.

Sincerely yours,


for Samuel Coleman, P.E.
Director
Superfund Division

Enclosure

cc: Mr. Alvie Nichols (Project Manager)
Superfund Cleanup Section (MC-143)
Texas Commission on Environmental Quality (with enclosure)

Mr. Mark Vickery (Deputy Director)
Office of Permitting, Remediation and Registration
Texas Commission on Environmental Quality (without enclosure)

Mr. Glenn Sekavec (Regional Enforcement Officer)
U.S. Department of the Interior (without enclosure)

~~Ms. Susan MacMullin (Regional Director)~~
U.S. Fish and Wildlife Service (without enclosure)

Mr. Brian Cain (Field Supervisor)
U.S. Fish and Wildlife Service (without enclosure)

Mr. Richard Seiler
Texas Commission on Environmental Quality (without enclosure)

Mr. Bill Grimes
Texas General Land Office (without enclosure)

Mr. Don Pitts
Texas Parks and Wildlife Department (without enclosure)

Mr. Barry Forsythe
U.S. Fish and Wildlife Service (without enclosure)

Mr. Roger Lee
U.S. Geological Survey (without enclosure)

Mr. Lawrence Klein (Coastal Resource Coordinator)
National Oceanic and Atmospheric Administration (without enclosure)

ENCLOSURE A

LIST OF POTENTIALLY RESPONSIBLE PARTIES GULFCO MARINE MAINTENANCE SUPERFUND SITE

1. **Dow Chemical Company**

CT Corporation System
Registered Agent for
Dow Chemical Company
350 N. St. Paul St., Suite 2400
Dallas, TX 75201

Dow Chemical Company
3020 Dow Center
Midland, MI 48674

2. **Mr. Ronald W. Hudson**

34 Green Slope Place
The Woodlands, TX 77381

3. **LDL Coastal Limited L.P.**

LDL Coastal Limited L.P.
906 Marlin Dr., CR 756
Freeport, TX 77541

LDL Management, LLC
906 Marlin Dr., CR 756
Freeport, TX 77541

4. **Mr. Jack Palmer**

1509 Alta Vista
Alvin, TX 77511

5. **Sequa Corporation**

Chromalloy American Corporation
c/o Sequa Corporation
111 Eighth Avenue
New York, NY 10019

CT Corp. System, Registered Agent
for Sequa Corporation
350 No. St. Paul St.
Dallas, TX 75201

